

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CENTRAL STATES, SOUTHEAST AND)	
SOUTHWEST AREAS PENSION FUND, and)	
HOWARD McDOUGALL, trustee,)	
)	Case No. 08 C 228
and)	
)	Judge Darrah
CENTRAL STATES, SOUTHEAST AND)	
SOUTHWEST AREAS HEALTH AND)	Magistrate Judge Brown
WELFARE FUND and HOWARD McDOUGALL,)	
trustee,)	Notice of Appeal
)	
Plaintiffs,)	
)	
v.)	
)	
ACTIVE TRANSPORTATION COMPANY, LLC,)	
a Kentucky limited liability corporation,)	
)	
Defendant.)	
)	

NOTICE OF APPEAL

Notice is hereby given that Active Transportation Company, LLC, Defendant in the above-referenced case, appeals to the United States Court of Appeals for the Seventh Circuit from an order for preliminary injunction entered in this action on the 20th day of February, 2008 (Docket No. 22).

DATED: March 17, 2008

Respectfully submitted,

ACTIVE TRANSPORTATION COMPANY, LLC

By: /s/ Mark Cascari
One of Its Attorneys

Mark Cascari
Ronald J. Kramer
Meagan C. LeGear
SEYFARTH SHAW LLP
131 South Dearborn Street
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CERTIFICATE OF SERVICE

I, Mark Cascari, an attorney, do hereby certify that on this 17th day of March, 2008, I electronically submitted the foregoing NOTICE OF APPEAL to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Rebecca K. McMahon, Esq.
Central States, Southeast and Southwest Areas Health and Welfare
and Pension Funds
9377 West Higgins Road
Rosemont, Illinois 60018-4938

/s/ Mark Cascari
Mark Cascari

SEVENTH CIRCUIT COURT OF APPEALS INFORMATION SHEET

Include the names of all plaintiffs (petitioners) and defendants (respondents) who are parties to the appeal. Use a separate sheet if needed.

NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION DOCKET NUMBER: 08cv228

PLAINTIFF (Petitioner)

v.

DEFENDANT (Respondent)

Central States, Southeast (Appellee)	Active Transportation (Appellant)
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(Use separate sheet for additional counsel)

PETITIONER'S COUNSEL		RESPONDENT'S COUNSEL	
Name	Rebecca K. McMahon	Name	Mark Cascari
Firm	Central States Law Dept.	Firm	Seyfarth Shaw LLP
Address	9377 W. Higgins Rd. Rosemont, IL 60018-4938	Address	131 South Dearborn Street Suite 2400 Chicago, IL 60603
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Other Information			
District Judge	Darrah	Date Filed in District Court	1/10/08
Court Reporter	M. Hacker (ext 5564)	Date of Judgment	2/22/08
Nature of Suit Code	791	Date of Notice of Appeal	3/17/08

COUNSEL: Appointed ☐ Retained ☒ Pro Se ☐

FEE STATUS: Paid ☒ Due ☐ IFP ☐
IFP Pending ☐ U.S. ☐ Waived ☐

Has Docketing Statement been filed with the District Court Clerk's Office? Yes ☐ No ☒

If State/Federal Habeas Corpus (28 USC 2254/28 USC 2255), was Certificate of Appealability:

Granted ☐ Denied ☐ Pending ☐

If Certificate of Appealability was granted or denied, date of order: _____

If defendant is in federal custody, please provide U.S. Marshall number (USM#): _____

IMPORTANT: THIS FORM IS TO ACCOMPANY THE SHORT RECORD SENT TO THE CLERK OF THE U.S. COURT OF APPEALS PURSUANT TO CIRCUIT RULE 3(A). Rev 04/01

BR

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	John W. Darrah <i>[Signature]</i>	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	08 C 228	2/20/08 DATE	2/20/2008
CASE TITLE	Central States, Southeast and Southwest Areas Pension Fund, et al. v. Active Transportation Company, LLC		

DOCKET ENTRY TEXT

Plaintiffs' motion for a preliminary injunction [9] is granted.

☐ [For further details see text below.]

Docketing to mail notices.

STATEMENT

Currently before the Court is Plaintiffs' Motion for a Preliminary Injunction. The Court, having considered the parties' pleadings, memoranda and exhibits, rules as follows:

Plaintiffs, Central States, Southeast and Southwest Areas Pension Fund ("Pension Fund") and Central States, Southeast and Southwest Areas Health and Welfare Fund ("Health and Welfare Fund"), have brought suit against Defendant, Active Transportation Company, LLC ("Active Transportation") to collect delinquent fringe benefit contributions owed to Plaintiffs under the terms of a collective bargaining agreement. Under the terms of the agreement, Active Transportation is required to pay monthly contributions to the Pension Fund and the Health and Welfare Fund on behalf of covered employees.

Currently, Active Transportation has not paid its contributions for October or November 2007 and was late in paying its December 2007 contribution. Plaintiffs seek a preliminary injunction, ordering Defendant to make full payments of its contributions in a timely fashion during the pendency of this action.

"ERISA provides for civil enforcement, including an injunction, of an employer's obligations to make contributions to pension plans." *Gould v. Lambert Excavating, Inc.*, 870 F.2d 1214, 1217 (1989) (citing 29 U.S.C. §§ 1132(a)(3), 1145) (*Gould*). A preliminary injunction may be entered based on (1) the threat of irreparable harm to the moving party, (2) the possible injury to the opposing party, (3) the likelihood that the movant will succeed on the merits of the claim, and (4) public policy considerations. *Gould*, 870 F.2d at 1217.

Plaintiffs argue that the threat of irreparable harm exists because Defendant may become insolvent before Plaintiffs are able to collect what they are owed. See *Roland Machinery Co. v. Dresser Industries, Inc.*, 749 F.2d 380, 386 (7th Cir. 1984) (irreparable harm may exist where damages may be unobtainable because the defendant may become insolvent before a final judgment can be entered and collected). Plaintiffs

STATEMENT

argue that Defendant admits to be experiencing "severe cash flow problems" due to a loss of business. Defendant asserts that it will be "in a position to pay all outstanding contributions," as well as any interest or liquidated damages, "by the end of May 2008."

However, Plaintiffs should not be required to rely solely on the representations of Defendant that its business will improve. Plaintiffs have shown that Defendant is in financial difficulty, and Defendant gives no reason to believe that its situation will soon improve. Therefore, the Court finds that there is a threat of irreparable harm to Plaintiffs.

Plaintiffs argue that the preliminary injunction could not possibly injure Defendant because the injunction would require Defendant to do nothing more than fulfill its contractual obligations. Defendant does not argue this point. Defendant also does not contest that Plaintiffs will succeed on the merits. Although it disputes the amount owed, Defendant admits that it has outstanding contributions for the months of October and November of 2007. Nor does Defendant dispute that it must make future payments to Plaintiffs. Finally, Defendant does not dispute Plaintiffs' argument that the entry of the preliminary injunction would be in the public interest.

Therefore, it is hereby ordered that Active Transportation pay in full all contributions owed to the Pension Fund and the Health and Welfare Fund for the months including and subsequent to February 2008, to be received by the Pension Fund and the Health and Welfare Fund on or before the 15th day of the following month during the pendency of this case.

APPEAL, BROWN

United States District Court
Northern District of Illinois – CM/ECF LIVE, Ver 3.1.3 (Chicago)
CIVIL DOCKET FOR CASE #: 1:08-cv-00228
Internal Use Only

Central States, Southeast and Southwest Areas Pension Fund et al v. Active Transportation Company, LLC
Assigned to: Honorable John W. Darrah
Cause: 29:1145 E.R.I.S.A.

Date Filed: 01/10/2008
Jury Demand: None
Nature of Suit: 791 Labor: E.R.I.S.A.
Jurisdiction: Federal Question

Plaintiff

**Central States, Southeast and
Southwest Areas Pension Fund**

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Plaintiff

Howard McDougall
trustee

represented by **Rebecca Kate McMahon**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Albert M. Madden
(See above for address)
ATTORNEY TO BE NOTICED

Anthony E. Napoli
(See above for address)
ATTORNEY TO BE NOTICED

Timothy Craig Reuter
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

**Central States, Southeast and
Southwest Areas Health and Welfare
Fund**

represented by **Rebecca Kate McMahon**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Albert M. Madden
(See above for address)
ATTORNEY TO BE NOTICED

Anthony E. Napoli
(See above for address)
ATTORNEY TO BE NOTICED

Timothy Craig Reuter
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

Active Transportation Company, LLC
a Kentucky limited liability corporation

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Date Filed	#	Docket Text
01/10/2008	<u>1</u>	COMPLAINT filed by Central States, Southeast and Southwest Areas Health and Welfare Fund, Central States, Southeast and Southwest Areas Pension Fund, Howard McDougall; Filing fee \$ 350. (gmr,) (Entered: 01/11/2008)
01/10/2008	<u>2</u>	CIVIL Cover Sheet. (gmr,) (Entered: 01/11/2008)
01/10/2008	<u>3</u>	ATTORNEY Appearance for Plaintiffs Central States, Southeast and Southwest Areas Health and Welfare Fund, Central States, Southeast and Southwest Areas

		Pension Fund, Howard McDougall by Rebecca Kate McMahon. (gmr,) (Entered: 01/11/2008)
01/10/2008	<u>4</u>	ATTORNEY Appearance for Plaintiffs Central States, Southeast and Southwest Areas Health and Welfare Fund, Central States, Southeast and Southwest Areas Pension Fund, Howard McDougall by Albert M. Madden. (gmr,) (Entered: 01/11/2008)
01/10/2008	<u>5</u>	ATTORNEY Appearance for Plaintiffs Central States, Southeast and Southwest Areas Health and Welfare Fund, Central States, Southeast and Southwest Areas Pension Fund, Howard McDougall by Anthony E. Napoli. (gmr,) (Entered: 01/11/2008)
01/10/2008	<u>6</u>	ATTORNEY Appearance for Plaintiffs Central States, Southeast and Southwest Areas Health and Welfare Fund, Central States, Southeast and Southwest Areas Pension Fund, Howard McDougall by Timothy Craig Reuter. (gmr,) (Entered: 01/11/2008)
01/10/2008	<u>7</u>	(Court only) RECEIPT regarding payment of filing fee paid on 1/10/2008 in the amount of \$350.00, receipt number 2453387. (gmr,) (Entered: 01/11/2008)
01/10/2008	<u>8</u>	SUMMONS Issued as to Defendant Active Transportation Company, LLC. (gmr,) (Entered: 01/11/2008)
01/14/2008	<u>9</u>	MOTION by Plaintiffs Central States, Southeast and Southwest Areas Health and Welfare Fund, Central States, Southeast and Southwest Areas Pension Fund, Howard McDougall for preliminary injunction (Attachments: # <u>1</u> Memorandum# <u>2</u> Exhibit A# <u>3</u> Exhibit I# <u>4</u> Exhibit 2# <u>5</u> Exhibit B# <u>6</u> Exhibit C# <u>7</u> Exhibit D# <u>8</u> Exhibit E# <u>9</u> Exhibit F# <u>10</u> Exhibit G# <u>11</u> Exhibit H# <u>12</u> Exhibit I)(McMahon, Rebecca) (Entered: 01/14/2008)
01/14/2008	<u>10</u>	NOTICE of Motion by Rebecca Kate McMahon for presentment of motion for preliminary injunction, <u>9</u> before Honorable John W. Darrah on 1/15/2008 at 10:00 AM. (McMahon, Rebecca) (Entered: 01/14/2008)
01/15/2008	<u>11</u>	ATTORNEY Appearance for Defendant Active Transportation Company, LLC by Ronald J. Kramer (Kramer, Ronald) (Entered: 01/15/2008)
01/15/2008	<u>12</u>	ATTORNEY Appearance for Defendant Active Transportation Company, LLC by Mark A. Casciari (Casciari, Mark) (Entered: 01/15/2008)
01/16/2008	<u>13</u>	MINUTE entry before Judge John W. Darrah :Plaintiff's motion for a preliminary injunction <u>9</u> is entered and briefed as follows: response by 1/28/08, reply by 2/4/08. Status hearing set for 2/20/08 at 9:30 a.m. Mailed notice(maf,) (Entered: 01/16/2008)
01/28/2008	<u>14</u>	SUMMONS Returned Executed by Central States, Southeast and Southwest Areas Health and Welfare Fund, Central States, Southeast and Southwest Areas Pension Fund, Howard McDougall as to Active Transportation Company, LLC on 1/11/2008, answer due 1/31/2008. (McMahon, Rebecca) (Entered: 01/28/2008)
01/28/2008	<u>15</u>	MEMORANDUM by Active Transportation Company, LLC in Opposition to motion for preliminary injunction, <u>9</u> (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit B# <u>3</u> Exhibit C# <u>4</u> Exhibit D)(Casciari, Mark) (Entered: 01/28/2008)
01/31/2008	<u>16</u>	ATTORNEY Appearance for Defendant Active Transportation Company, LLC by Meagan Christene Legear (Legear, Meagan) (Entered: 01/31/2008)
01/31/2008	<u>17</u>	MOTION by Defendant Active Transportation Company, LLC for extension of time <i>to answer or otherwise respond</i> (Legear, Meagan) (Entered: 01/31/2008)
01/31/2008	<u>18</u>	NOTICE of Motion by Meagan Christene Legear for presentment of extension of time <u>17</u> before Honorable John W. Darrah on 2/7/2008 at 09:00 AM. (Legear, Meagan) (Entered: 01/31/2008)
02/04/2008	<u>19</u>	REPLY by Central States, Southeast and Southwest Areas Health and Welfare Fund, Central States, Southeast and Southwest Areas Pension Fund, Howard McDougall to MOTION by Plaintiffs Central States, Southeast and Southwest

		Areas Health and Welfare Fund, Central States, Southeast and Southwest Areas Pension Fund, Howard McDougall for preliminary injunction <u>9</u> (Madden, Albert) (Entered: 02/04/2008)
02/06/2008	<u>20</u>	MINUTE entry before Judge John W. Darrah :Defendant's motion for an extension of time to answer or otherwise respond [17, 18] is granted. Defendant has until 2/28/08 to answer or otherwise respond. Mailed notice (gmr,) (Entered: 02/07/2008)
02/20/2008	<u>21</u>	MINUTE entry before Judge John W. Darrah : Status hearing held and continued to 4/24/08 at 9:00 a.m. Mailed notice(maf,) (Entered: 02/20/2008)
02/20/2008	<u>22</u>	MINUTE entry before Judge John W. Darrah :Plaintiffs' motion for preliminary injunction <u>9</u> is granted.Mailed notice (ef,) (Entered: 02/22/2008)
02/28/2008	<u>23</u>	<i>Defendant's</i> ANSWER to Complaint by Active Transportation Company, LLC(Legear, Meagan) (Entered: 02/28/2008)
03/17/2008	<u>24</u>	NOTICE of appeal by Active Transportation Company, LLC regarding orders <u>22</u> Filing fee \$ 455, receipt number 07520000000002620238. (Casciari, Mark) (Entered: 03/17/2008)